unpatentability of the claims for any of the mentioned being claimed. It is agreed that a rejection of any claim can not be based on unpatentability implied to such a claim due to unpatentability of another claim. The sole basis for unpatentability resides in statues. The statues do not authorize unpatentability to be applied from other claims in the same application. Nothing in the statue permits unpatentability of claims to be based on unpatentability being applied by unpatentable other claims. In short, a restriction requirement has nothing to do with patentability or unpatentability.

In addition, the Official Action states, "...the device of group I invention could be made by processes different then those of the group II invention. For example, connecting the plural electrode to the conductive pattern using a evaporation, sputtering or electroplating techniques instead of using a conductive paste". Again, no prima facie basis for the restriction requirement has been made in the Official Action. In making this suggestion, the Examiner has imposed different limitations then are present in the claims (see, eg. claim 19). Moreover, there is no factual basis for identifying a material difference arising from a change in the manufacturing process suggested by the Examiner.

In requiring restriction, the Examiner, also notes that the inventions are classified in different classes, thus alluding to the fact that the inventions would involve divergent fields of search. However, as the Examiner is well aware, such a factor per se is not a basis for determining distinctiveness in accordance with MPEP § 806.

Furthermore, it is respectfully submitted that there is nothing in 35 USC § 121 that gives the Patent Office the authority to require restriction between different statutory classes of claims unless the claims cover "independent and distinct inventions". It is respectfully submitted that the statutory requirements, not having been met here for Group I and II respective, the Examiner

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should withdraw the requirement for restriction and provide Applicant with an action on the merits of the withdrawn claims.

It should also be noted that the restriction requirement as prescribed by 35 USC § 121 are discretionary with the Examiner, and in view of the remarks above, the restriction requirement should be withdrawn. In summary therefore, all of the claims are believed to be directed to a single invention. However, so as to be fully responsive, Applicant provisionally elects to prosecute Group I, i.e. claims 1-11, and it is requested that, without further action thereon, the remaining claims be retained in this application pending disposition of the application, and for possible filing of a divisional application.

An action on the merits is respectively requested.

In the event there are any fee deficiencies or additional fees are payable, please charge then (or credit any overpayment) to our Deposit Account No. 08-1391.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231 on April 5, 2000 at Manchester, New Hampshire.

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